WEE JOO SUI & ORS.

v.

KOH SAI JWEE

HIGH COURT MALAYA, MELAKA
WAN YAHYA J
[CIVIL SUIT NO. 66 OF 1980
10 JANUARY 1981

CIVIL PROCEDURE: *Injunction - To restrain defendant from carrying on business - Injury to defendant more than plaintiff - Harm to business - Preserve status quo for defendant to remain until determination of trial.*

The plaintiffs applied by way of Summons-in-Chambers for an Interlocutory Injunction to restrain the defendant from carrying on a coffee shop business on certain premises.

In 1940 the three plaintiffs and three others orally agreed to carry on a coffee shop business. It was the practice once in four years for the partners to tender for the running of the business, the money from the bidder being divided equally between the partners each month.

The partnership was dissolved by the death of one of the partners in July 1979 but all the partnership subsisted and in February 1980 the defendant who was the highest bidder took over the business.

The 1st plaintiff claimed the defendant had not complied with some precondition and had taken over the business forcefully. The defendant denied that he was a party to a written Agreement tendered by the plaintiffs. Further the defendant averred that the tenancy was in his name and so were the rent receipts.

Held:

[1] There was a serious dispute of fact and law and that there is a case for trial.

[2] The plaintiffs had failed to prove that they would suffer irreparable damage as they could be adequately compensated for by the monthly tender sum to which all the partners were entitled.

[3] The applications for the injunction was made seven months after the defendant was allowed to run the business uninterrupted. Restraining the defendant now would injure the defendant more than the plaintiff who had ceased his business at the premises. It did not matter who ran the business so long as the right to sue and recover the amount due to the partnership existed.

[4] If adequancy of damages was in doubt the balance of convenience was in favour of preserving the defendant's *status quo* by allowing him to remain in occupation until determination of the Suit.

[Application dismissed.]

For plaintiffs/applicants - Haji A.K. Beshir
For defendant/respondent - Mr. C.C. Aiyuthurai with Mr. Low Tung Weng

(Digest Form Only)

Also found at [1981] CLJ 90